



**THE ATTORNEY GENERAL
OF TEXAS**

August 17, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Kenneth Graeber
Chief Appraiser
Harris County Appraisal
District
P. O. Box 920975
Houston, Texas 77292-0975

Open Records Decision No. 500

Re: Whether information voluntarily disclosed to an appraisal district pursuant to a confidentiality agreement is protected from disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. (RQ-1316)

Dear Mr. Graeber:

You request our decision regarding the application of the Texas Open Records Act, article 6252-17a, V.T.C.S., to information submitted to your office under a confidentiality agreement entered into pursuant to section 22.27 of the Tax Code. You wish to know whether such information is confidential in light of a recent amendment to another section of the Tax Code, section 25.195.

You have provided us with the following information:

A Houston attorney has asked this agency to provide him with detailed information regarding all sales and information used to arrive at the appraised value of certain commercial properties.

We have advised the attorney that the commercial sales in which he is interested were obtained under a promise of confidentiality made pursuant to section 22.27, Texas Tax Code. He now demands release of the confidential sales and cites the Texas Open Records Act and other unspecified provisions of law which we presume to be Senate Bill 308, 70th Tex. Leg., R.S., which added Section 25.195 to the Tax Code.

It is our intent to promptly provide all requested information, with the exception of the confidential sales.

Regarding the sales obtained under a promise of confidentiality, we respectfully request that you issue an Open Records Decision as to whether or not, given the enactment of Senate Bill 308, the Harris County Appraisal District may continue to withhold such sales from public disclosure. (Emphasis added.)

We note that you did not include with your request letter a copy of the letter submitted to you asking for access to the information sought, nor did you include copies of the information actually requested, nor do you indicate the tax years for which such data is sought. Your description of the letter submitted to you states that the attorney asked for "all sales and information used" to arrive at the appraised value of certain properties. You do not indicate whether any other "information used" to arrive at the appraised values was submitted pursuant to a section 22.27 confidentiality agreement other than the sales price data.¹ We understand you to say that you intend to provide access to all information requested except the sales price data submitted to you pursuant to section 22.27 of the Tax Code. You indicate that the attorney seeks information regarding his own property.

You contend that the sales price data is excepted from disclosure under section 3(a)(1) of the act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Specifically, you contend that the information is excepted by section 22.27 of the Tax Code, which provides the following:

1. We note that section 22.27 of the code reaches, inter alia, "information voluntarily disclosed to an appraisal office or the State Property Tax Board about real or personal property sales prices after a promise that it will be held confidential." (Emphasis added.) This language appears to embrace, not just sales price data, but also "information about" sales price data.

(a) Rendition statements and real and personal property reports filed with an appraisal office and information voluntarily disclosed to an appraisal office or the State Property Tax Board about real or personal property sales prices after a promise it will be held confidential are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;

(3) to the director of the State Property Tax Board and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner;

(6) if and to the extent the information is required to be included in a public

document or record that the appraisal office is required to prepare or maintain.

(c) A person who legally has access to a statement or report or to other information made confidential by this section or who knowingly obtains the confidential information commits a Class B misdemeanor if he knowingly:

(1) permits inspection of the statement or report by a person not authorized to inspect it by Subsection (b) of this section;

(2) discloses the confidential information to a person not authorized to receive the information by Subsection (b) of this section.

(d) No person who directly or indirectly provides information to the State Property Tax Board or appraisal office about real or personal property sales prices, either as set forth in Subsection (a) of this section under a promise of confidentiality, or otherwise, shall be liable to any other person as a result of providing such information.

Section 22.27 was included in the Property Tax Code, as originally enacted; it has been amended twice, in 1981 and 1985.

Section 25.195 of the Tax Code was originally enacted in 1983 and became effective August 29, 1983. Acts 1983, 68th Leg., ch. 920, § 1, at 5079. As originally enacted, it provided:

After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section 25.22(a) of this code, a property owner or his designated agent may inspect the appraisal records, together with supporting data as defined in Section 25.01(c) of this code and schedules used in making appraisals for the appraisal records, relating to property of the property owner.

The bill analysis for the 1983 enactment prepared for the House Committee on Ways and Means for the 68th

Legislature indicates that it was the intention of the legislature to confer a special right of access on property owners and their agents to information that falls within the confidentiality provisions of section 22.27 and concomitantly subsection 3(a)(1) of the Open Records Act, and to information that falls within other exceptions to disclosure in the act. This does not, however, make the information available to the general public. See Tax Code, § 22.27(c) (Person with legal right of access to this confidential information shall not make it public.). The "Background" section of the bill analysis refers specifically to the Open Records Act, citing subsections 3(a)(1) (excepting from disclosure information deemed confidential by law), 3(a)(4) (excepting from disclosure information which, if released, would give advantage to competitors or bidders), 3(a)(10) (excepting from disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision), and 3(a)(11) (excepting from disclosure inter-agency or intra-agency memoranda or letters that would not be available by law to a party in litigation with the agency). Thus, these exceptions to public disclosure do not prevent disclosure to persons with a statutory right of access under section 21.195. See generally Attorney General Opinion MW-381 (1981).

The "Purpose & Synopsis" section of the bill analysis states:

This bill provides that a property owner or his designated agent may with regard to property of the owner inspect the appraisal records and the supporting data and schedules used in making appraisals for the records. This inspection may occur after the chief appraiser has submitted the records to the appraisal review board.

Bill Analysis, Tex. H.B. 1655, 68th Leg. (1983). The bill analysis prepared for the Senate Committee on Finance for the 68th Legislature essentially tracks the language set forth in the bill analysis prepared for the House committee. Bill Analysis, Tex. H.B. 1655, 68th Leg. (1983).

Section 25.195 of the Tax Code, as amended in 1987 by Senate Bill No. 308, now provides:

After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section 25.22(a) of this

code, a property owner or his designated agent may inspect the appraisal records relating to the property owner, together with the supporting data and schedules used in making appraisals for the appraisal records relating to that property. (Amended language underscored.)

The "Bill Analysis" prepared for the Subcommittee on Property Tax of the House Committee on Ways and Means for the 70th Legislature sets forth the purpose of the 1987 amendment: "To grant a property owner access to all appraisal records, supporting data, and valuation schedules related to the appraisal of his property." (Emphasis added.) Bill Analysis, Tex. S.B. 515, 69th Leg. (1985). The section by section analysis contained in the "Bill Analysis" provides the following:

Amends Section 25.195, Tax Code, to provide that a property owner may inspect the appraisal records and supporting data and schedules used appraising property. Deletes the reference to the definition of 'supporting data' as it is defined in Section 25.01(c), making it clear that all records used in the appraisal of property are public records and open for inspection by a property owner. (Emphasis added.)

There can be little doubt that the legislature intended by the 1987 amendments to section 25.195 to clarify the scope of the right of access granted to a property owner thereby and to expand that right of access to all materials used to determine the appraised value of his property.²

2. Section 25.01 of the Tax Code requires the chief appraiser to prepare appraisal records listing all property that is taxable within the appraisal district and stating the appraised value of each. This section further permits an appraisal district to contract with a private appraisal firm. Subsection 25.01(c) requires that any such contract must provide that copies of all appraisals and "supporting data" be made available to the appraisal district. Subsection (c) provides that "supporting data" "shall not be construed to include personal notes, correspondence, working papers, thought processes, or any other matter of a

(Footnote Continued)

Thus, the 1987 amendment clarifies that the original 1983 enactment conferred on the property owner who submitted through his agent a request to you for certain sales price data a right to such information. In other words, the legislature intended to confer a special right of access on the property owner to the information covered by your request, not by the 1987 amendments to section 25.195, but by the 1983 enactment itself.

In most instances, a chief appraiser can fully comply with section 25.195 of the code without violating the disclosure prohibitions of section 22.27, because the appraised value of most properties is determined without reference to any information obtained pursuant to a section 22.27 confidentiality agreement. However, in the event that any information voluntarily disclosed to the appraisal office about real or personal property sales prices after a promise that it will be held confidential is included in the supporting data used to determine the appraised value of a property owner's real or personal property, section 25.195 would require its release to that property owner or his representative. At the same time, section 22.27 would prohibit its disclosure, unless it is pursuant to the stated exceptions set forth in subsection (b) to the prohibition on disclosure. In such an instance, it is clear that sections 22.27 and 25.195 of the Tax Code are in conflict.

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privileged or proprietary nature." Thus prior to the 1987 amendment, the property owner's right of access to information that was used to determine the appraised value of his property was limited so as not to include any personal notes, correspondence, working papers, thought processes, or any other matter of a privileged or proprietary nature provided by an appraisal firm to an appraisal district; the 1987 amendment removes this limitation. However, section 25.01 of the code was not amended and still provides that any "supporting data" used by an appraisal firm, which must be made available to the appraisal district, need not include personal notes, correspondence, etc. Thus, while the amended version of section 25.195 of the code now specifically gives property owners a right of access to certain information to which they were not given access before, it is still the case that a private appraisal firm need not provide such information to an appraisal district in the first place.

Statutes that deal with the same general subject matter are considered as being in pari materia, even though they contain no reference to one another and were passed at different sessions of the legislature. State v. Dyer, 200 S.W.2d 813 (Tex. 1947). Any apparent conflict between their provisions will be harmonized if possible, Bishop v. Houston Independent School District, 29 S.W.2d 312 (Tex. 1930), and effect will be given to all provisions of each act if they can be made to stand together. Townsend v. Terrell, 16 S.W.2d 1063 (Tex. 1929). But when the statutes conflict, the later expression of legislative intent controls and, to that extent, the later statute will be held to have repealed the earlier statute. State v. Easley, 404 S.W.2d 296 (Tex. 1966).

Accordingly, we construe the later-enacted provision, section 25.195 of the Tax Code, to control over section 22.27 of the Tax Code in the event of conflict.³ In other

3. We noted earlier that section 22.27 was included in the Property Tax Code as it was originally enacted; it has been amended twice, in 1981 and in 1985. We also noted that section 25.195 was originally enacted in 1983 and amended in 1987. It is suggested that, since section 22.27 was amended last in 1985, that section is the later-enacted provision and controls over the 1983 version of section 25.195 (at least until the effective date of the 1987 amendment to section 25.195). We disagree.

The 1985 amendments to section 22.27 were intended to accord relief from liability for civil damages for disclosing real and personal property sales prices to property tax authorities. Acts 1985, 69th Leg., ch. 148, at 675. The amendments wrought no other changes; the remaining language of the section was reproduced exactly as it had been enacted originally. Original provisions appearing in an amended act are to be regarded as having been the law since they were first enacted and as still in effect from that time, while new provisions are to be construed at the time that the amendment took effect. City of Corpus Christi v. Herschbach, 536 S.W.2d 653 (Tex. Civ. App. - Corpus Christi 1976, writ ref'd n.r.e.); Shipley v. Floydada Independent School District, 250 S.W. 159 (Tex. Comm'n App. 1923, judgm't adopted). In other words, absent unmistakable evidence of legislative intent to impliedly repeal section 25.195 by the reenactment of the original language of

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words, we construe section 25.195 to confer to a property owner a right of access to all appraisal records relating to property of the property owner, together with the supporting data and schedules used in making appraisals for the appraisal records relating to that property. A right of access to the sort of sales price data about which you inquire was conferred on property owners by virtue of the 1983 enactment of section 25.195. Consequently, the sales price data voluntarily submitted to an appraisal district pursuant to a section 22.27 confidentiality agreement entered into subsequent to the effective date of the 1983 enactment of section 25.195 is available to the requesting property owner. Sales price data voluntarily submitted to an appraisal district pursuant to a section 22.27 confidentiality agreement entered into prior to the effective date of the 1983 enactment of section 25.195, however, may be disclosed only pursuant to subsection (b) of section 22.27.⁴

S U M M A R Y

Section 22.27 of the Tax Code, in conjunction with section 3(a)(1) of the Texas Open Records Act, article 6252-17a, V.T.C.S., protects from required public disclosure rendition statements and real property reports and information about sales prices voluntarily disclosed to an appraisal district or the State Property Tax Board pursuant to a confidentiality agreement.

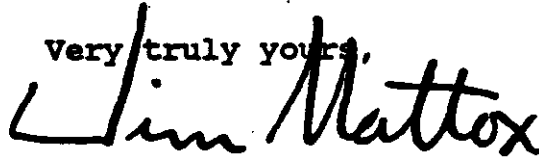
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section 22.27 with its amendment in 1985, we conclude that the legislature intended in 1985 that section 25.195 confer a property owner the same right of access that was conferred upon by the 1983 enactment.

4. We are required to construe statutes in such a way as to render them constitutional, if they reasonably can be so construed. Gov't Code, § 311.021. If we construed section 25.195 as controlling over section 22.27 in all instances in the event of a conflict, section 25.195 might run afoul of both the federal and state constitutional provisions that prohibit the impairment of contracts by the state. U.S. Const. art. I, § 10, cl. 1; U.S. Const. amend. XIV; Tex. Const. art. I, § 16. See also, Langever v. Miller, 76 S.W.2d 1025 (Tex. 1934); Travellers' Insurance Company v. Marshall, 76 S.W.2d 1007 (Tex. 1934).

This information cannot be released under the Open Records Act; subsection (b) of section 22.27 itself sets forth circumstances under which such information may be disclosed. Section 25.195, however, grants to property owners a special right of access to this information, submitted after the effective date of section 25.195, when the information is used in making appraisals of that owner's property.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is fluid and cursive, with the first name "Jim" and last name "Mattox" clearly distinguishable.

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